

Members:

Rep. Patrick Bauer, Chairperson
Rep. Thomas Saunders
Rep. Earl Harris
Sen. Lawrence Borst, Vice-Chairperson
Sen. Michael Gery



PROPERTY TAX STUDY COMMITTEE

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Authority: IC 2-5-24-2

MEETING MINUTES

Meeting Date: August 26, 1998
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Patrick Bauer, Chairperson; Rep. Thomas Saunders;
Rep. Earl Harris; Sen. Lawrence Borst; Sen. Michael Gery.

Members Absent: None.

Representative B. Patrick Bauer, Chairperson of the Committee, called the meeting to order at 1:15 p.m. He then introduced the members of the Committee. Representative Bauer introduced Mr. Frank Sabatine, Chairperson of the State Board of Tax Commissioners, for a presentation to the Committee.

Mr. Sabatine reviewed the recommendations made by the Property Tax Administration and Other Administrative Issues Subcommittee of the Citizens' Commission on Taxes.¹ These recommendations covered the following issues:

- (1) Assessor training.
- (2) Assessor continuing education.
- (3) Annual assessments - electronic data.
- (4) Abolishing local property tax control boards, modifying the debt

¹Copies of "Recommendations: Property Tax Administration and Other Administrative Issues Subcommittee" are on file in the Legislative Information Center, Room 230, State House, Indianapolis, Indiana 46204. The telephone number of the Legislative Information Center is (317) 232-9856.

remonstrance process, removing the State Board of Tax Commissioners from project review, and providing for project review by the county council.

(5) Assessment districts of 10,000 individuals.

(6) A January 1 assessment date if the inventory tax is eliminated.

(7) Assessment of major industrial facilities by the State Board of Tax Commissioners.

(8) Creation of an appeals agency separate from the State Board of Tax Commissioners.

(9) Use of a "value in use" method instead of a "value in exchange" method if market value assessment is implemented.

(10) Review of adjustments to and abatements of assessed values.

(11) Local approval of personal property abatements.

Representative Bauer asked whether the State Board of Tax Commissioners supported these recommendations, and Mr. Sabatine indicated that the State Board of Tax Commissioners generally supports the recommendations and had worked with the subcommittee in its deliberations.

Representative Harris asked what the appeal process would be if taxpayers disagreed with a local decision on a project under recommendation #4. Mr. Sabatine replied that no discussion of this had taken place and that the county council would be the recommended decision-maker on projects.

Senator Borst mentioned that the idea of reducing the assessors' salaries if they fail to meet training requirements would be controversial. He then asked for an explanation of the "value in use" standard. Mr. Sabatine gave an example of an automobile plant's value when in use compared to its value if it were closed and there were no auto maker interested in buying it. The plant's "value in use" could be higher than a value in exchange, and therefore "value in exchange" often under-values property.

Senator Borst commented that using a "value in use" approach could also over-value property as well.

Representative Bauer noted that the "value in use" standard is used when there are no comparable properties available to determine a value. He cited the example of farmland and how its value in use could be lower than its value in exchange if it could be developed.

Representative Bauer asked about the rationale behind eliminating the State Board of Tax Commissioners from reviewing personal property abatements, and Mr. Sabatine noted that the State Board of Tax Commissioners is not involved in real property abatements. He commented that he saw no reason for the State Board of Tax Commissioners to be involved in personal property abatements.

Senator Borst stated that the technology is available to do annual assessments and that annual assessments should be implemented. He suggested that State Board of Tax Commissioners rules or legislation should be enacted, if needed, to standardize

the computer systems so that all counties and the State can communicate and easily share data. He supported the idea of having the State help pay for the necessary technology. Mr. Sabatine added that some states pay for the entire cost of the technology and also for assessor training. He hoped the Committee would consider the state's financial assistance for technology and training because the State Board of Tax Commissioners is seeking to professionalize assessments, and county councils are not always willing to appropriate the necessary funds.

Representative Bauer asked about exempt and nonexempt property owned by the same entity and the process for assessing the nonexempt property. Timothy Brooks, the Executive Secretary of the State Board of Tax Commissioners, explained that if the exemption is included in the local records, the State Board of Tax Commissioners would have the ability to review the exemption, but that if the property is not on the records, the State Board of Tax Commissioners has no source of information.

Representative Bauer mentioned the conference hotel at the IUPUI campus, and Mr. Brooks compared this to county hospitals that have for-profit operations. He noted that this issue probably needs to be reviewed. Representative Bauer asked for an opinion from the State Board of Tax Commissioners on whether a for-profit business could be operated using nonassessed or exempt property.

Representative Bauer then asked Mr. Sabatine to review the implementation of HEA 1783-1997.² This discussion included the issues of equalizing assessments, assessor certification, and continuing education of assessors.

Representative Tom Saunders asked what the cost of equalization would be to the counties. Jeff Wuensch, the Director of Tax Review for the State Board of Tax Commissioners, said that the cost varies among the counties depending on the number of townships, the number of parcels, and the type of property. He gave a rough estimate of \$50,000 per county.

Representative Saunders said the equalization should be done after the next general reassessment and not during the current one. Mr. Wuensch stated that the law provides that the equalization is to be done by July 1 of the year the general reassessment commences, not the year the reassessment is completed. Mr. Sabatine indicated that the State Board of Tax Commissioners is not sure what the legislative intent was. Mr. Brooks added that a rule will be published in November 1998 and counties will have to compile data that will be due in April 1999 so that the equalization can be completed by July 1, 1999.

Mr. Sabatine then discussed the appeals process and the structure of the new appeals division, and he stated that new resources are being devoted to appeals. He said there are 4,800 appeals in the process and that appeals are filed as fast as they are resolved. He added that the State Board of Tax Commissioners is also dealing with 238 Tax Court cases.

²Copies of the State Board of Tax Commissioners' report are on file in the Legislative Information Center, Room 230, State House, Indianapolis, Indiana 46204. The telephone number of the Legislative Information Center is (317) 232-9856.

Senator Borst said that the appeals process has been abused in the past. He asked how many of the 4,800 appeals in process are "automatic" appeals by attorneys who appeal every assessment of their clients and whether a nonprevailing party must pay for the time and effort of the State Board of Tax Commissioners. He asked whether there should be a disincentive applied to appeals that are found to be frivolous. Mr. Brooks said the State Board of Tax Commissioners has proposed a rule on contingency fee appeals (prohibiting testimony at hearings or on-site inspections). He added that the most aggressive are the nonattorney tax representatives. He explained that the Tax Court is shifting the burden to the State Board of Tax Commissioners to prove the assessment even though the county officials have done the work. He indicated that the county officials may not show up at the hearing.

Representative Bauer asked for a report on property tax administrative issues and on recent Tax Court decisions affecting property taxation. Mr. Brooks informed the Committee that the "real world objective standard" is being applied in cases subsequent to the St. John case. The State Board of Tax Commissioners is addressing the Court's concerns by changing the appeals process and by changing the reassessment manual that will be used in future assessments. Mr. Sabatine briefly discussed the 2001 reassessment manual.

Senator Borst asked whether the true tax value standard or a comparable sales standard will be used. Mr. Sabatine indicated that market value techniques are being used to make assessment more objective. Senator Borst indicated that the State Board of Tax Commissioners should not try to close the gap between the true tax value standard and comparable sales values. Mr. Sabatine assured the Committee that the State Board of Tax Commissioners is not doing this.

Senator Borst noted that residential property will see the greatest increase as a result of the 2001 general reassessment and that land values increased the most in the last general reassessment.

Representative Bauer asked whether assessing land using comparable sales and assessing improvements using cost less depreciation is a change. Mr. Sabatine responded that there is no change in assessing improvements.

Senator Borst asked about the State Board of Tax Commissioners rule on common construction wage and Mr. Brooks said the rule is in effect (effective June 1, 1998) and has been challenged in Allen County and is now pending in the Court of Appeals on a motion to dismiss by the State Board of Tax Commissioners and a request for an injunction on the rule by the plaintiffs.

Representative Bauer then introduced Mr. Edward Gohmann, Staff Attorney with the Legislative Services Agency, for a report on the constitutionality of the property tax deductions and credits that are now in effect under Indiana statutes. Mr. Gohmann reported that it is difficult to predict what the courts might decide. He discussed the history of the cases that have been decided in both Indiana and other states. He noted that the Indiana Supreme Court in the Town of St. John case quoted the debates and

the specific language of the Indiana Constitution. Indiana courts have been fairly consistent in requiring that any property tax exemption must be one that is specifically listed in the Indiana Constitution. In 1902, the Court upheld the mortgage deduction partly on the basis that it was a valid method of achieving the "just valuation" required under the Indiana Constitution; in 1962 the Court rejected a classification and assessment of household goods based on 5% of the realty even though it made for logical administration and rejected an exemption for automobiles even though an excise tax was used to replace the property tax.

Mr. Gohmann reviewed cases from other states and informed the committee that the pattern in other states was the rejection of an exemption and then an amendment to the state constitution to allow it. He advised the Committee that the best way to look the constitutionality of exemptions, deductions, and credits is to think of a range moving from those deductions and credits that are most likely to be found unconstitutional to the deductions and credits that possibly are constitutional. He noted that the \$1 assessed value declared in statutes for forest land, windbreaks, and other specified types of property probably would be struck down as unconstitutional, while other targeted forms of property tax relief funded by state revenue sources other than property taxes might possibly be found constitutional. However, he noted there are no firm answers concerning the constitutionality of property tax relief provisions because Indiana courts have decided few cases on the this issue.³

Representative Bauer asked whether abatements would be upheld and Mr. Gohmann responded that the method of abatement is a critical factor - that is, if the property tax is abated by increasing the property taxes of others (a shift) it is probably not, but if the property tax is abated using another tax it might be.

Representative Bauer asked if there were any pending cases in Indiana on the issue of the constitutionality of abatements, and Mr. Gohmann indicated he was not aware of any.

Mr. Gohmann then reviewed the history and issues being presented by the appeal before the Indiana Supreme Court in the Town of St. John case. Representative Bauer stated that it seems that the Tax Court has required elements of market value even though the Supreme Court had held that market value is not required in the property tax system. He said that by requiring "real world" data the Tax Court is effectively requiring market value.

Senator Borst asked if the State Board of Tax Commissioners has waived its argument that the true tax value system is constitutional. Mr. Timothy Brooks indicated that the State Board of Tax Commissioners is still arguing in favor of using true tax values. Mr. Sabatine added that the hope is a decision will be handed down in late November or early December.

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The meeting was adjourned at 2:50 p.m.